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**ENGROSSED SUBSTITUTE SENATE BILL 5077**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Government Operations, Tribal Relations & Elections (originally sponsored by Senators Pflug, Shin, Carrell, Swecker, Sheldon, Becker, Honeyford, Benton, Schoesler, Stevens, Delvin, Keiser, Hewitt, Roach, and Holmquist Newbry; by request of Attorney General)

READ FIRST TIME 02/07/11.

1       AN ACT Relating to prohibiting the use of eminent domain for  
2 economic development; and adding a new chapter to Title 8 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       NEW SECTION. **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6       (1) "Consumer-owned utility" has the same meaning as in RCW  
7 19.27A.140.

8       (2) "Economic development" means any activity to increase tax  
9 revenue, tax base, employment, or general economic health, when that  
10 activity does not result in:

11       (a) The transfer of property to public possession, occupation, and  
12 enjoyment;

13       (b) The transfer of property to a private entity that is a public  
14 service company, consumer-owned utility, or common carrier;

15       (c) The use of eminent domain:

16       (i)(A) To remove a public nuisance;

17       (B) To remove a structure that is beyond repair or unfit for human  
18 habitation or use; or

19       (C) To acquire abandoned property; and

1 (ii) To eliminate a direct threat to public health and safety  
2 caused by the property in its current condition; or

3 (d) The transfer of property to private entities that occupy an  
4 incidental area within a publicly owned and occupied project.

5 "Economic development" does not include the transfer of property to  
6 a public service company, a consumer-owned utility, or a common carrier  
7 for the purpose of constructing, operating, or maintaining generation,  
8 transmission, or distribution facilities. "Economic development" also  
9 does not include port districts' activities under Title 14 or 53 RCW.  
10 "Economic development" also does not include highway projects.

11 (3) "Public service company" has the same meaning as defined in RCW  
12 80.04.010.

13 (4)(a) "Public use" means:

14 (i) The possession, occupation, and enjoyment of the property by  
15 the general public, or by public agencies;

16 (ii) The use of property for the creation or functioning of public  
17 service companies, a consumer-owned utility, or common carriers; or

18 (iii) Where the use of eminent domain:

19 (A)(I) Removes a public nuisance;

20 (II) Removes a structure that is beyond repair or unfit for human  
21 habitation or use; or

22 (III) Is used to acquire abandoned property; and

23 (B) Eliminates a direct threat to public health and safety caused  
24 by the property in its current condition.

25 (b) The public benefits of economic development, including an  
26 increase in tax base, tax revenues, employment, and general economic  
27 health, may not constitute a public use.

28 NEW SECTION. **Sec. 2.** Private property may be taken only for  
29 public use and the taking of private property by any public entity for  
30 economic development does not constitute a public use. No public  
31 entity may take property for the purpose of economic development.

32 NEW SECTION. **Sec. 3.** In an action to establish or challenge the  
33 asserted public use of a taking of private property, the taking of  
34 private property shall be deemed for economic development, and not a  
35 proper basis for eminent domain, if the court determines that the  
36 taking of the private property does not result in any of the exceptions

1 to economic development set forth in section 1(2) of this act, and  
2 economic development was a substantial factor in the governmental  
3 body's decision to take the property.

4 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act constitute  
5 a new chapter in Title 8 RCW.

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